

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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KRISTIN A. CARMODY, M.D., M.H.P.E.,

Plaintiff,

**21-CV-8186 (VF)**

-against-

**ORDER**

NEW YORK UNIVERSITY, et al,

Defendants.

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**VALERIE FIGUEREDO, United States Magistrate Judge**

At ECF Nos. 171, 172, and 199, Defendants sought to preclude Plaintiff from offering into evidence at trial certain text messages and e-mails. As discussed at the conference on March 13, William Chiang will be testifying at trial. The e-mail from Dr. Woo (see ECF No. 172-1 at 11) is inadmissible hearsay. See Mar. 13, 2024 Tr. (“Tr.”) at 35. The text message between Dr. Carmody and Dr. Jordan Swartz (see ECF No. 172-1 at 2-5) is admissible under the party admission exception to the hearsay rule. See Fed. R. Evid. 801(d)(2)(D); see also Henry v. Lucky Strike Entertainment, LLC, 2013 WL 4710488, at \*4-6 (E.D.N.Y. Sept. 1, 2013); Chen v. Shanghai Café Deluxe, Inc., 2019 WL 1447082, at \*12 (S.D.N.Y. Mar. 8, 2019); Howe v. Reader’s Digest Ass’n, Inc., 686 F. Supp. 461, 464-65 (2d Cir. 1988). Dr. Swartz was employed by NYU as an attending physician, and he was speaking about conduct that he and other attending physicians engaged in at the hospital during the course of their employment. Dr. Swartz’s statement about his job duties, which was made during the course of his employment, is a party admission even though he was not a supervisor or decisionmaker. As such, the two text messages at ECF No. 172-1 at 4 discussing “professional misconduct” as “conduct that we all do” (Dr. Carmody’s text and Dr. Swartz’s response) are admissible. The other portions of the text message exchange between Dr. Swartz and Dr. Carmody are inadmissible hearsay.

**SO ORDERED.**

DATED: New York, New York  
March 21, 2024

A handwritten signature in black ink, appearing to read 'Valerie Figueredo', is written above a horizontal line.

VALERIE FIGUEREDO  
United States Magistrate Judge